IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 1066 of 2005.

Decided on: 19.06.2007.

M/s. R.M. Minerals (P) Ltd. … Petitioner.

Versus

The Presiding Judge and Another. … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the petitioner: **Mr. Anup Rattan, Advocate.**

For the Respondent No.2: **Mr. R.D. Kaundal, Advocate.**

Rajiv Sharma, Judge:

This petition arises out of the award dated 7.7.2005 passed by the Labour Court-cum-Industrial Tribunal, Dharamshala (camp at Una) in reference No. 86/2002.

The brief facts which are necessary for the adjudication of this petition are that on the failure of the conciliation proceedings, the State Government had made the following reference to the Labour Court-cum-Industrial Tribunal, Dharamshala:

> **"Whether the termination of the services of Shri M.C. Joshi son of Shri Kanshi Ram w.e.f. 28.11.2000 by the Management of M/s R.M. Minerals (P) Ltd.,**

Whether reporters of local papers may be allowed to see the judgment? Yes.

Mehatpur, District Una, H.P. without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits and back wages the above workman is entitled to?"

The respondent No.2 (hereinafter referred to as the workman for convenience sake) was appointed as a Clerk with the petitioner-company/employer on 1st April, 1998 on a consolidated salary of Rs. 3,500/- per month. He was subsequently designated as Personal Assistant on a consolidated salary of Rs. 6,550/-. He was terminated by the management of the petitioner-company on 28th November, 2000. He sent a demand notice to the management on 9.12.2000 and on the failure of the conciliation proceedings; the matter was referred to the Labour Court-cum-Industrial Tribunal as stated hereinabove.

In sequel to the reference made, the workman had filed the statement of claim and the petitioner-company had also filed the reply to the same. The learned Labour Court-cum-Industrial Tribunal had answered the reference in the affirmative on 7.7.2005 directing the petitioner-company to reinstate the workman within a period of 90 days with 60% back wages along with interest @ 9%. He was also held entitled for a sum of Rs. 10,000/- as compensation and Rs. 3,000/- as litigation expenses along with arrears of pay at the revised rates from the date of his re-designation i.e. 1st February, 1999 till the date of his dis-engagement i.e. 28th November, 2000 retained by the petitioner-company as security.

Mr. Anup Rattan, Advocate appearing on behalf of the petitioner-company had strenuously argued that the award dated 7.7.2005 is not sustainable in the eyes of law. He also contended that the respondent was not a workman within the meaning of section 2 (s) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). He had also submitted that the workman had abandoned his job and thus it was not a case of retrenchment.

Mr. R.D. Kaundal had supported the award dated 7.7.2005 passed by the Labour Court-cum-Industrial Tribunal.

I have heard the parties and perused the record.

The picture which emerges from the pleadings of the parties is that the workman was appointed as Clerk on 1st April, 1998 and he was re-designated as Personal Assistant on 1.2.1999 on a consolidated salary of Rs. 6,550/-. He was terminated on 28.11.2000.

The Court had summoned the record of Labour Court vide order dated 19th December, 2006.

The workman had appeared as PW-1 before the Labour Court and categorically stated that he was engaged initially as Clerk and thereafter re-designated as Personal Assistant. The workman had categorically testified in his statement while appearing as PW-1 that he was discharging clerical duties such as typing, letter drafting, maintenance of registers, preparation and submission of returns, disbursement of salary and wages etc. The workman though admitted the contents of Ext.RX-3, but had stated in his statement that the same was signed by him under duress.

He had also stated that Ext.RX-4 was the out-come of undue pressure exerted by the Managing Director. Similar is his statement about Ext.RX-5. With regard to instructions, i.e. Ext. RX-6 and Ext.RX-7, he had stated that the same were issued by him at the instance of the Factory Manager.

It is clear from the language of Ext. P-8, dated 20th February, 1999 that the workman had been re-designated as Personal Assistant with effect from 1st February, 1999. It will be apt to reproduce Ext.P-8, dated 20th February, 1999 in its entirety as under:-

"REF: RMM/1998-99. 20th Feb., 99.
Mr. M.C. Joshi,
Clerk, Pers&Admn.

Sir,

The management is pleased to revise your monthly salary to Rs.6550/- as per the break-up given hereinunder:-

Basic salary	**:Rs.6000/-**
H.R.A.	**:Rs.500/-**
C.S.	**:Rs.50/-**
Total	**:Rs.6550/- (Rs. six thousand five hundred fifty only) and you are redesignated as Personal Asstt. W.e.f. 1st Feb. 99. Please note that the increased salary will be kept as your security and shall be paid to you on demand or at the time of separation from the services of the company.**

All other terms and conditions of your services shall remain unchanged.

Thanking you.

Yours faithfully,
For R.M.MINERALS P LTD.

Sd/-
MANAGER"

What duties the workman had to discharge had not been spelt vide Ext.P-8, dated 20th February, 1999 after re-designating him as Personal Assistant. Even the increased salary was to be kept as security and was to be paid on demand or at the time of separation from the services of the company. There is no documentary proof placed on record by the Management appointing the workman ever as Personal Manager. This Court has also perused Annexure P-5 which is the bio-data of the workman and no support can be taken by the management on the basis of the bio-data of the workman. Ex.P-6 and P-7 though signed by the workman are of no help to the management since it had failed to produce on record the copy of appointment letter issued in favour of the workman appointing him as Personal Manager. The fact of the matter is that the workman was appointed as Clerk and re-designated as Personal Assistant and had been discharging the duties of clerical nature. The management had failed to place on record any cogent and convincing evidence that the workman had been working in the supervisory or managerial capacity. Accordingly, the respondent No.2 is a workman under the provisions of section 2 (s) of the Act.

The next question requiring consideration is: Whether the workman has been retrenched in accordance with law or not? The workman while appearing as PW-1 had stated that he proceeded on leave with effect from 3.11.2000 to 27.11.2000 and his leave was sanctioned as per letter Ex.P-3. The learned

Labour Court had verbatim quoted Ex.P-3 in the award. This statement of the workman was not controverted during the course of his examination. The Labour Court had come to the just conclusion that the workman was on authorized leave with effect from 3.11.2000 to 27.11.2000 and he did not absent himself from 6.11.2000 as claimed by the management. The Labour Court had rightly not believed the version of the management that Ex. RX-1 to RX-4 were issued to the workman. The Labour Court after disbelieving the version of the management as per Ex.RX-1 to RX-4 had come to the conclusion that the retrenchment of the workman had been in violation of the provisions of section 25-F of the Act. The learned Labour Court had also not accepted the plea of the management that the workman had abandoned his job after taking into consideration the entire evidence. The plea of abandonment raised by the management is a question of fact and is required to be proved which the management has failed to do so.

Mr. Subhodh Kumar had appeared from the management side as RW-1. He had stated that Ex. RX-1 to RX-4 were issued to the workman to join the duties, but the workman did not join his duties. The management had also examined Sh. Parmodh Kumar as RW-2 who was working in the factory as Clerk since 1999. The workman in his cross-examination has denied the suggestion that he was assigned the duties of managerial nature. In the pay slip of the workman for the month of September with effect from 1st September, 1999 to 30th September, 1999, Ex. P-7 the designation

of the workman has been shown as Personal Assistant. In the abstract of attendance register Ex.RW-2/A the designation of the workman has been shown as Personal Assistant. The Labour Court on the basis of the material placed on record had come to the conclusion that the workman was never appointed as Personal Manager and was only discharging the duties of Personal Assistant.

The Hon'ble Supreme Court has laid down the following tests whether the person will fall within the definition of section 2(s) of the Act or not on the basis of the wages paid to him or the nature of duties discharged by him:

The Apex Court has held in a case between ***South Indian Bank, Ltd. and Chacko (A.R.), 1964-I LLJ 19*** as under:-

> **"This brings us to the last objection that on appointment as accountant, the respondent Chacko ceased to be a workman. Admittedly, the mere fact that he was designated as accountant would not take him out of the category of workman. This was recognized in Para. 332 of the Sastri award when it was said:**
>
> > ***"The categories of workmen known as head clerks, accountants, head cashiers, should prima facie have to be taken as workmen wherever they desire to be so treated but with this important proviso that the banks are at liberty to raise an industrial dispute about such classification wherever they feel that with reference to a particular branch and a particular office a person so designated is really entrusted with work of a***

> ***directional and controlling nature and perhaps even supervision of a higher type over ordinary supervisory agencies."***

In Para. 167, where the case of accountants was specially dealt with, it was again said:

> ***"In several cases they will indisputably be officers. It is difficult to lay down a hard and fast rule in respect of them. An accountant oftentimes is the second officer in charge of branches, particularly where the branches are comparatively small. In big banks where there is a hierarchy of officers there may be a chief accountant, accountants and sub-accountants. In most of these cases the 'accountants' will probably be officers. There will however be incumbents of such posts, though going under the dignified designation of accountants who are in reality only senior clerks doing higher type of clerical work involving an element of supervision over other clerks as part of their duties. In such cases where they can properly be regarded as workmen the minimum allowances which we have fixed for sub-accountants would equally apply to them."***

The labour court appears to have taken proper note of this distinction between accountants who are really officers and accountants who are merely senior clerks with supervisory duties and on a consideration of the evidence on the record as regards the duties actually performed by the respondent Chacko has come to the conclusion that he was merely a senior clerk, doing mainly clerical

duties, and going by the designation of accountant and was in reality a workman as defined in the Industrial Disputes Act and doing an element of supervisory work.

The Apex Court has explained the term 'supervisory work' in a case between ***All India Reserve Bank Employees' Association and another and Reserve Bank of India and another, 1965-II LLJ 175*** while explaining the impression 'workman' as under:-

> **"(s) 'workman' means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connexion with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-**
>
> **(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934, or**
>
> **(ii) who is employed in the police service or as an officer or other employee of a prison; or**
>
> **(iii) who is employed mainly in a managerial or administrative capacity; or**

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

Shri Chari contends that the exclusion of class II staff is based on a wrong construction of the above definition, particularly the definition of "workman", and a misunderstanding of the duties of class II employees who have been wrongly classed as supervisors. He contends alternatively that as class II is filled by promotion from class III, the question could and should have been gone into in view of the principle enunciated in the *Dimakuchi Tea Estate case [1958-II L.L.J. 500].* Shri Chari in support of his first argument points to the opening part of S.2(s) where it speaks of "any skilled or unskilled manual, supervisory, technical or clerical work" and contrasts it with the words of Cl.(iv) "being employed in a supervisory capacity" and submits that the difference in language is deliberate and is intended to distinguish supervisory work from plain supervision. According to him "supervisory work" denotes that the person works and supervises at the same time, whereas "supervisory capacity" denotes supervision but not work. Shri Chari divides supervision into two kinds:

(a) supervision which is a part of labour, and

(b) supervision which is akin to managerial functions though it is not actually so.

He submits that this division is clearly brought out in the definition of "workman" by the use of different expressions such as "work" and "capacity" for that a supervisor doing work enjoys the status of labour and a supervisor acting only in supervisory capacity enjoys the status of employer's agent at the lowest level.

In support of his contention Shri Chari has referred to the amendment of the National Labour Relations Act of the United States of America (commonly known as the Wagner Act) [(1935) 49 Stat. 449] by the Labour-Management Relations Act, 1947 (commonly known as the Taft-Hartley Act) [(1947) 61 Stat. 130], and the case of Packard Motor Company v. National Labour Relations Board [91 L. Ed. 1040], which preceded the amendment. The Packard Motor Company case arose under the Wagner Act and the question was whether foremen were entitled as a class to the rights of self-organization and collective bargaining under it. The benefits of the Wagner Act were conferred on employees which by S. 2 (3) included "any employee." The company, however, sought to limit this wide definition which made foremen employees both at common law and in common acceptance, with the aid of the definition of "employer" in S. 2 (2) which said that the word included

> **"any person acting in the interest of an employer directly or indirectly . . ."**

The Supreme Court of the United States in holding that foremen were entitled to the protection of the Wagner Act held by majority that even those who acted for the employer in some matters including standing between the management and manual labour could have interests of their own when it came to fixation of wages, hours, seniority rights or working condition. Shri Chari suggests that the definition in the Industrial Disputes Act serves the same purpose when it makes a distinction between "work" and "capacity."

This ruling, of course, cannot be used in this context, though as we shall presently see, it probably furnishes the historical back-ground for the amendment in the United States and leads to the next limb of Sri Chari's argument. The minority, speaking through Justice Mr. Douglas, made the following observation which puts the Packard Motor Company case of consideration.

> **"Indeed, the problems of those in the supervisory categories of management did not seem to have been in the consciousness of the Congress . . . There is no phrase in the entire Act which is description of those doing supervisory work."**

In this state of affairs it is futile to refer to this ruling any further, for to derive assistance from any of the two opinions savours of a priori deduction.

The Packard Motor Company case [91 L. Ed. 1040] (vide supra) was decided in March 1947 and in the same year the Taft-Hartley Act was passed.

Section 2 of the latter Act defined employer to include

> **"any person acting as agent of an employer, directly or indirectly . . . "**

and the term employee was defined to exclude any individual employed as a supervisor. The term "supervisor" was defined to mean an individual

> **"having authority, in the interest of the employer, to hire, transfer, suspend, lay off recall, promote, discharge, assign, reward, or discipline other employees or responsible to direct them, or to adjust their grievances, or effectively to recommend such action, if in connexion with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."**

Shri Chari suggests that the Industrial Disputes Act, recognizing the same difficulty, may be said to have adopted the same tests by making a distinction between "work" and "capacity". According to him, these tests provide for that twilight area, where the operatives (to use a neutral term) seem to enjoy a dual capacity.

The argument is extremely ingenious and the simile interesting, but it misses the realities of the amendment of the Industrial Disputes Act in 1956. The definition of "workman," as it originally stood before the amendment in 1956 was as follows:-

> **"2 (s) 'workman' means any person employed (including an apprentice) in any**

> **industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in naval, military or air service of the Government."**

The amending Act of 1956 introduced among the categories of persons already mentioned persons employed to do supervisory and technical work. So far the language of the earlier enactment was used. When, however, exceptions were engrafted, that language was departed from in Cl. (iv) partly because the draftsman followed the language of Cl. (iii) and partly because from persons employed on supervision work some are to be excluded because they draw wages exceeding Rs. 500 per month and some because they function mainly in a managerial capacity or have duties of the same character. But the unity between the opening part of the definition ad Cl. (iv) was expressly preserved by using the word "such" twice in the opening part. The words, which bind the two parts, are not- "but does not include any person." They are' "but does not include any such person" showing clearly that what is being excluded is a person who answers the description "employed to do supervisory work" and he is to be excluded because being employed in a "supervisory capacity" he draws wages exceeding Rs.500 per month or exercises functions of a particular character.

The scheme of our Act is much simpler than that of the American statutes. No doubt like the

Taft-Hartley Act the amending Act of 1956 in our country was passed to equalize bargaining power and also to give the power of bargaining and invoking the Industrial Disputes Act to supervisory workmen, but it gave it only to some of the workmen employed on supervisory work. "Workman" here includes an employee employed as supervisor. There are only two circumstances in which such a person ceases to be a workman. Such a person is not a workman if he draws wages in excess of Rs.500 per month or if he performs managerial functions by reason of a power vested in him or by the nature of duties attached to his office. The person who ceases to be a workman is not a person who does not answer the description "employed to do supervisory work" but one who does answer that description. He goes out of the category of "workmen" on proof of the circumstances excluding him from the category.

By the revision of salaries in such a way that the minimum emoluments equal to wages (as defined in the Act) of class II staff now exceed Rs.500 per month, the Reserve Bank intends to exclude them from the category of workmen and to render the Industrial Disputes Act inapplicable to them. Sri Palkivala frankly admitted that this step was taken so that this group might be taken away from the vortex of industrial disputes. But this position obviously did not exist when the scale was such that some at least of class II employees would have drawn wages below the mark. The reference in those circumstances was a valid reference and the national tribunal was not right in ignoring that class altogether. Further, the national tribunal was

not justified in holding that if at a future time an incumbent would draw wage in the time-scale in excess of Rs.500, the matter must be taken to be withdrawn from the jurisdiction of the Central Government to make a reference in respect of him and the national tribunal to be ousted of the jurisdiction to decide the dispute if referred. Supervisory staff drawing less than Rs.500 per month cannot be debarred from claiming that they should draw more than Rs.500 presently or at some future stage in their service. They can only be deprived of the benefits if they are non-workmen at the time they seek the protection of the Industrial Disputes Act.

Sri Chari next contends that considering the duties of class II employees, it cannot be said that they are employed in a supervisory capacity at all and in elucidation of the meaning to be given to the words "supervisory" and "capacity" he has cited numerous dictionaries, Corpus Juris, etc., as to the meaning of the words "supervise," "supervisor," "supervising," "supervision," etc. The word "supervise" and its derivatives are not words of precise import and must often be construed in the light of the context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with a power of inspection and superintendence of the manual work of others. It is, therefore, necessary to see the full context in which the words occur and the words of our own Act are the surest guide. Viewed in this manner, we cannot overlook the import of the word 'such' which expressly links the exception to the main part. Unless this was done, it would have been possible

to argue that Cl.(iv) indicated something, which though not included in the main part, ought not by construction to be so included. By keeping the link it is clear to see that what is excluded is something which is already a part of the main provision."

The Constitution Bench in a case ***Syndicate Bank, Ltd. and Its workmen, 1966-II LLJ 194*** has held that designation of a person is not conclusive of his status as an officer. Their Lordships of the Supreme Court have held as under:-

"We are concerned in the present dispute with exemptions (iii) and (iv) of this definition. Under exemption (iii), a person who is employed mainly in a managerial or administrative capacity is not a workman. Under exemption (iv) a person who is employed in a supervisory capacity, is not a workman provided he drawn wages exceeding Rs.500 per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly or a managerial nature. It is well-settled that the mere designation by which a person is designated is not conclusive of his status as an officer; the industrial court has to look the nature of the duties assigned to the person concerned to decide whether he is a workman or not.

The Apex Court has held in ***Ananda Bazar Ptrika (Private) Ltd. and Its workmen, 1969-II LLJ 670*** that an employee doing mainly clerical work and occasionally discharging some duties of a supervisory nature was a workman as defined under Section 2(s)

of the Industrial Disputes Act, 1947 Their Lordships have held as under:-

> **"As the circumstances related above show, the sole question that fell for decision was whether Gupta was a workman on the date of his retirement or not. Admittedly, his total wages at the relevant date exceed Rs.500 per month and the contention of the appellant-company was that he was employed in supervisory capacity and, consequently, under S.2(s) (iv) of the Industrial Disputes Act, he was not a workman. On behalf of the workmen, the plea was that Gupta was a clerk and was not employed in supervisory capacity and that is the contention which has been accepted by the labour court.**
>
> **The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity. This principle finds support from the decisions of this Court in South Indian Bank, Ltd. v. A.R. Chacko [964-I L.L.J. 19] and May & Baker (India), Ltd. v. their workmen [1961-II L.L.J.94]. In the present case, we have, therefore, to examine the evidence to see whether the labour court is right in**

holding that, because of the main work of Gupta being clerical in nature, he was not employed in supervisory capacity."

The Apex Court in ***Burmah Shell Oil Storage & Distribution Company of India Ltd. and The Burmah Shell Management Staff Association and Others, 1970-II LLJ 590*** has held that the test of substantial work performed by the concerned employee should be applied to find out as to whether the employee is employed to do skilled or unskilled manual, clerical, technical or supervisory work. Their Lordships of the Hon'ble Supreme Court have held as under:-

"In J. & F. Stone Lighting & Radio Ltd. v. Havgarth [1968] A.C. Pt. 3, 157, the same test of the substantial nature of the employment was applied in interpreting the words "employed in manual labour" in the Factories Act. Thus, in the present case also, in determining which of the employees in the various categories are covered by the definition of "workman", we have to see what is the main or substantial work which they are employed to do? If it is supervisory work, it would be held that they were employed to do supervisory work even though they may also be doing some technical, clerical or manual work. If, on the other hand, the supervisory work be incidental to the main or substantial work of any other type, viz., clerical, manual or technical, the employment would not be in a supervisory capacity. It is in the light of these principles that we shall now proceed to examine the correctness of the decision of the Tribunal in respect of various categories of workmen involved in this reference. We shall take them up in the order in which they

were discussed by the counsel for parties in the course of their arguments.

The Apex Court has held in ***The State Bank of Bikaner and Jaipur and Shri Hari Har Nath Bhargava, 1971 LLJ 331*** that the designation of the employee is not decisive and what determines the status is a consideration of the nature and functions assigned to the employee concerned.

The Division Bench of Calcutta High Court in ***Ramendra Narayan Deb. v. 8th Industrial Tribunal, West Bengal and others, 1975 Lab. I.C. 94*** has explained the term 'supervisor' as under:-

> **"The ratio of the above decisions is that the determining factor in deciding whether a person is a workman is the principal or main work he is required to do in his employment. Any other work which a person is required to do incidentally in connection with his principal or main work or otherwise as a small fraction of his work will not convert the nature of his employment. The principal or main work in the employment of a person will have to be determined from the letter of appointment, the nature of duties the employee has to perform in course of his employment and other attending circumstances."**

The Hon'ble Calcutta High in ***Dunlop India Ltd., v. 5th Industrial Tribunal, W.B. and others, 1981 Lab. I.C. 332*** has held that a person who is doing mainly clerical and technical work and only doing supervisory work as incidental to his other works

would not be working in a supervisory capacity. The Hon'ble single Judge has held as under:-

> **"Therefore, it is necessary to find out whether the concerned workmen were employed in supervisory works. On behalf of the respondent, it was concerned that in order to be supervisor, there must be power of assigning duty and distribution of work. Any one who performs the mere task of checking up could not be said to be performing supervisory duty. Reliance in this connection was placed on the decision of the Supreme Court in the case of Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. Burmah Shell Management Staff Association, AIR 1971 SC 922; 1971 Lab IC 699 wherein the Supreme Court emphasised that the specification of the four types of work was intended to lay down that an employee was to become a workman only if he was employed to do work of one of those types while there might be employees who, not doing any of those works would be outside the scope of workman without having to resort to the exceptions. In that case, the Supreme Court reiterated that in order to be workman of a supervisory nature there must be power of assigning duty and disbursing work. In case of this type, learned standing Counsel, on behalf of the respondent emphasised that unless there was a clear error, being a finding of fact, the Court naturally would not interfere. Undoubtedly, that is to say, unless there is a clear error, the Court even exercising appellate jurisdiction would not interfere with a fact finding body. But a closer examination of this case would reveal that in case of a clear error even on a question of fact which is jurisdictional**

fact, the Court can in appropriate case go into this question and if it is of the opinion that there has been such an error which as I have mentioned before must be found clearly and unequivocally by the Court, the court is entitled to set aside the decision of the Tribunal which has assumed jurisdiction by deciding jurisdictional fact erroneously. In this connection, reliance was placed on a decision reported in 1961 (2) Lab LJ 117 at p. 119 (AIR 1967 SC 408). But it must also be emphasised that one who is doing mainly clerical and technical work and only doing supervisory work as incidental to his other works would not be working in supervisory capacity. For this reliance was placed on the decision of the Supreme Court in the case of Bihar State Road Transport Corporation v. State of Bihar, AIR 1970 SC 1217: 1970 Lab IC 1040."

The Apex Court in ***S.K. Verma v. Mahesh Chandra and another, 1983 Lab.I.C. 1483*** has held a Development Officer as a workman. Their Lordships have held as under:-

"'Workman' was originally defined by S.2(s) of the Industrial Disputes Act, 1947 as meaning:

"any person employed (including an apprentice) in any industry to do any skilled manual or clerical work for hire or reward and includes, for the purpose of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute but does not include any person employed in the naval, military or air service of the Crown."

The definition underwent a substantial amendment in 1956 and this is how it stands now:-

"Workman" mean any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy (Discipline) Act, 1934; or

(ii) Who is employed in the police service or as an officer of other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draw wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

The words 'any skilled or unskilled manual, supervisory, technical or clerical work' are not intended to limit or narrow the amplitude of the definition of 'workman'; on the other hand they

indicate and emphasise the broad sweep of the definition which is designed or cover all manner of persons employed in an industry, irrespective of whether they are engaged in skilled work or unskilled work, manual work, supervisory work, technical work or clerical work. Quite obviously the broad intention is to take in the entire 'labour force' and exclude the 'managerial force'. That, of course, is as it should be.

It is trite to say that Industrial Disputes Act is legislation intended to bring about peace and harmony between labour and management in an industry and for that purpose, it makes provision for the investigation and settlement of industrial disputes. It is, therefore, necessary to interpret the definitions of 'industry', 'workman', 'industrial dispute' etc. so as not to whittle down, but to advance the object of the Act. Disputes between the forces of labour and management are not to be excluded from the operation of the Act by giving narrow and restricted meanings to expressions in the Act. The Parliament could never be credited with the intention of keeping out of the purview of the legislation small bands of employees who, though not on the managerial side of the establishment, are yet to be denied the ordinary rights of the forces of labour for no apparent reason at all. In Workmen of Indian Standards Institutions v. Management of Indian Standards Institution, AIR 1976 SC 145: (1976) 2 SCR 138: (1976 Lab IC 137) this Court had occasion to point out:

" …….. It is necessary to remember that the Industrial Disputes Act, 1947 is a legislation intended to bring about peace and harmony

between management and labour in an 'industry' so that production does not suffer and at the same time, labour is not exploited and discountented and, therefore, the tests must be so applied as to give the widest possible connotation to the term 'industry'. Whenever a question arises whether a particular concern is an 'industry', the approach must be broad and liberal and not rigid or doctrinaire. We cannot forget that it is a special welfare legislation we are interpreting and we must place such an interpretation as would advance the object and purpose of the legislation and give full meaning and effect to it in the achievement of its avowed social objective."

So we adopt a pragmatic and not a pedantic approach and we proceed, in considering the question whether development officers in the Life Insurance Corporation are workmen, to first consider the broad question on which side of the line they fall, labour or management, and then to consider whether there are any good reasons for moving them over from one side to the other.

One does not have to be carried away by the appellation 'development officer' as the Industrial Tribunals appears to have been. After all, what is in a name? Notwithstanding the glorified designation, we must look to the nature of his duties to discover what precisely a development officer is? The Life Insurance Corporation of India (Staff) Regulations classifies the staff into four categories as follows:-

"Class I – Officers
Class II – Development Officers
Class III – Supervisory and Clerical Staff

Class IV – Subordinate Staff."

It is seen that development officers while classified separately from 'Supervisory and Clerical Staff are also classified separately from 'Officers'. Schedule-I of the Staff Regulations shows the appointing and disciplinary authorities against the various posts. In the case of even the lowest posts of Class I, it is the Zonal Manager that is the appointing and disciplinary authority, while in the case of Development Officers, it is the Divisional Manager (that is, the officer next below in rank to Zonal Manager) that is the appointing and disciplinary authority. Even in the case of Superintendents of Class III, it is the Zonal Manager that is the appointing and disciplinary authority. Development Officers and employees of Class III and Class IV other than Superintendents are placed on par and in their case, it is the Divisional Manager that is the appointing and disciplinary authority. Schedule II gives the pay scales of the employees of the Corporation. The scale of pay of the lowest paid Class I officer is Rs.530-40-1050/-. The scale of pay of a Superintendent in Class III is Rs.330-25-680-30-740/-. The scale of pay of development officer Grade I is Rs.230-15-320-20-360-EB-20-400-25-550-EB-30-760. The scale of pay of a development officer Grade II is Rs.170-10-220/-. The scale of pay as well as the authorities competent to appoint and take disciplinary action indicate that the appellation 'development officer' is no more than a glorified designation. Development Officers are separated from 'officers' strictly so called and are generally placed on a par with subordinate and clerical staff."

The Apex Court in ***Ved Parkash Gupta and Messrs Delton Cable India (P) Ltd., 1984-I L.L.J. 546*** has held that Chargeman Security was workman. Their Lordships have held as under:-

> **"A perusal of the evidence of WW-1 and MW-1 regarding the nature of the duties performed by the appellant shows that the substantial part of the work of the appellant consisted of looking after the security of the factory and its property by deputing the watchmen working under him to work at the factory gate or sending them to watch-towers or around the factory or to accompany visitors to the factory and making entries in the visitors' register as regards the visitors and in the concerned registers as regards materials entering or going out of the premises of the factory. It must be noted that MW-1 has admitted in his evidence that there is nothing in writing to show what duties are to be carried out by the appellant. Placed in such a situation the appellant might have been doing other items of work such as signing identity cards of workmen, issuing some small items of stores like torch-cells etc. to his subordinate watchmen, which can be got from the stores even under the signatures of watchmen and filling up application forms of other workmen and counter-signing them or recommending advances and loans or for promotion of his subordinates. It must also be remembered that the evidence of both WW-1 and MW-1 shows that the appellant could never appoint or dismiss any workman or order any enquiry against any workman. In these circumstances we hold that the substantial duty of the appellant was only that of a Security Inspector at the gate of the factory premises and that it was neither managerial**

nor supervisory in nature in the sense in which those terms are understood in industrial law. In the light of the evidence and the legal position referred to above we are of the opinion that the finding of the Labour Court that the appellant is not a workman within the meaning of S.2(s) of the Act is perverse and could not be supported. On the evidence available on record we hold that the appellant clearly falls within the definition of a workman in S.2(s) of the Act and that the reference of the dispute under S.10(i)(c) of the Act is valid law."

The Apex Court has again held in ***Arkal Govind Raj Rao and Ciba Geigy of India Ltd., Bombay, 1985-II L.L.J. 401*** that a person will not cease to be a workman if he performs some supervisory duties but he must be a person who must be engaged in supervisory capacity. Their Lordships of the Hon'ble Supreme Court have held as under:-

"Where the employee has multifarious duties and a question is raised whether is a workman or someone other than a workman the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to some other work, may not necessarily be in tune with the basic duties these additional duties cannot change the character and status of the person concerned. In other words, the dominant purpose of employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of a person. Appreciation of evidence by Labour Court cannot be faulted but it landed itself into an erroneous conclusion by

drawing impermissible inference from the evidence and overlooking the primary requirement of the principal and subsidiary duties of the appellant.

The test that one must employ in such a case is what was the primary, basic or dominant nature of duties for which the person whose status is under enquiry was employed. A few extra duties would hardly be relevant to determine his status. The words like managerial or supervisory have to be understood in their proper connotation and their mere use should not detract from the truth."

The Bombay High Court has held in ***S.B. Kulkarni and Indian Red Cross Society and others, 1988-I L.L.J. 411*** that designation is not the test to determine the status of a post; only the nature of duties performed or allocated to the post determines whether the work is of supervisory character or not.

The learned Single Judge of the Hon'ble Bombay High Court in ***M/s. Inter Globe Air Transport, a Division of Inter Globe Enterprises Private Ltd., v. Mrs. Leela Deshpande and another, 1994-I Lab.I.C. 1095 has*** held as under:-

"In view of the above three Supreme Court decisions, at this prima facie stage, I am inclined to agree with the view taken by the Industrial Court. It does appear that the predominant duties of the respondent workman consisted of booking of air-tickets and other incidental jobs such as maintenance of lists, typing on computers, visiting travel agents, distributing time-tables and fare-sheets, taking on reservations, making reservations, delivering tickets, getting visas dispatching greeting cards etc. Just because there

are three employees, who were supposed to report to her, it cannot be said that her duty is essentially of a managerial or supervisory in nature. As held by the Supreme Court, in Ananda Bazar Patrika's case, one has to look to the main nature of the work and not to the incidental work, which may be done in the infraction of the time. The mere fact that some control over other clerks is given would not change the position of a Clerk to that of a Supervisor or a Manager, observed the Supreme Court in Ananda Bazar Patrika's case. The mere power of allocation of work between the three employees, who were answerable to the respondent workman, cannot lead one to the conclusion that she is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act. In my view, the ratio of the three Supreme Court decisions, which were cited by Mr. Puri, clearly supports the findings of the Industrial Court at this stage. There is nothing in the ratio of the Supreme Court decision in Srivastava's case which can persuade one to take a view different from the view taken by the Supreme Court in the three earlier case mentioned above."

The Hon'ble Supreme Court in ***S.K. Maini and M/s. Carona Sahu Co. Ltd. & Ors., 1994-II L.L.J. 1153*** has held that while determining who is a workman, the principal duties and functions of the employees are to be seen. Their Lordships have held as under:-

"After giving out careful consideration to the facts and circumstances of the case and the submissions made by the learned Counsel for the parties, it appears to us that whether or not an employee is a workman under S.2(s) of the

Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any straight jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organizations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it. In this connection, reference may be made to the decision of this Court in Burmah Shell Oil Storage and Distribution Company of India Ltd. v. Burmah Shell Management Staff Association (supra). In All India Reserve Bank employees' Association v. Reserve Bank of India, (1965-II-Lab-175), it has been held by this Court that the word 'supervise' and its derivatives are not words of precise import and must often be construed in the light of context for unless controlled, they cover an easily simple oversight and direction as manual work coupled with the power of inspection and superintendence of the manual work of others. It has been rightly contended by both the learned Counsel that the designation of an employee is not of much

importance and what is important is the nature of duties being performed by the employees. The determinative factor is the main duties of the concerned employee and not some works incidentally done. In other words, what is in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time does also some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of 'workman' as defined in S.2(s) of the Industrial Disputes Act."

The Apex Court has held in ***Sharad Kumar Versus Govt. of NCT of Delhi and Others, (2002) 4 SCC 490*** that the question whether a particular person is a workman or not has to be determined on the basis of types of duties and not merely on the basis of designation of his post. Their Lordships of the Hon'ble Supreme Court have held as under:-

"In Section 2(s) "workman" is defined as follows:

"2. (s) 'workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any

proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by nature of the duties attached to the officer or by reason of the powers vested in him, functions mainly of a managerial nature."

On a fair reading of the provisions in Section 2(s) of the Act it is clear that "workman" means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward including any such person who has been dismissed, discharged or retrenched.

The latter part of the section excludes 4 classes of employees including a person employed mainly in a managerial or administrative capacity, or

a person employed in a supervisory capacity drawing wages exceeding Rs.1600 per month or exercises functions mainly of a managerial nature. It has to be taken as an accepted principle that in order to come within the meaning of the expression "workman" in Section 2(s) the person has to be discharging any one of the types of works enumerated in the first portion of the section. If the person does not come within the first portion of the section then it is not necessary to consider the further question whether he comes within any of the classes of workmen excluded under the latter part of the section. The person concerned comes within the first part of the section depends upon the nature of duties assigned to him and/or discharged by him. The duties of the employee may be spelt out in the service rules or regulations or standing order or the appointment order or in any other material in which the duties assigned to him may be found. When the employee is assigned a particular type of duty and has been discharging the same till the date of the dispute then there may not be any difficulty in coming to a conclusion whether he is a workman within the meaning of Section 2(s). If on the other hand the nature of duties discharged by the employee is multifarious then the further question that may arise for consideration is which of them is his principal duty and which are the ancillary duties performed by him. In such a case determination of the question is not easy at the stage when the State Government is exercising the administrative jurisdiction vested in it for the limited purpose of satisfying itself whether the dispute raised is an industrial dispute within the meaning of Section 2(k) of the Act. While deciding the question, designation

of the employee is not of much importance and certainly not conclusive in the matter as to whether or not he is a workman under Section 2(s) of the Act.

In *May and Baker (India) Ltd. v. Workmen* a Bench of three learned Judges of this Court constructed the provision of Section 2(s) (as it stood before the amendment of 1956) in order to ascertain whether the manual or clerical work done was merely of an incidental nature and whether the employee was not a workman as defined under the section. The Court made the following observations: (AIR pp.679-80, para 9)

> **"9. The company's case is that Mukerjee was discharged with effect from 1-4-1954. At that time the definition of the word 'workman' under Section 2(s) of the Industrial Disputes Act did not include employees like Mukerjee who was a representative. A 'workman' was then defined as any person employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward. Therefore, doing manual or clerical work was necessary before a person could be called a workman. This definition came for consideration before Industrial Tribunals and it was consistently held that the designation of the employee was not of great moment and what was of importance was the nature of his duties. If the nature of the duties is manual or clerical then the person must be held to be a workman. On the other hand if manual or clerical work is only a small part of the duties of the person concerned and incidental to his main work**

which is not manual or clerical, then such a person would not be a workman. It has, therefore, to be seen in each case from the nature of the duties whether a person employed is a workman or not, under the definition of that word as it existed before the amendment of 1956. The nature of the duties of Mukerjee is not in dispute in this case and the only question, therefore, is whether looking to the nature of the duties it can be said that Mukerjee was a workman within the meaning of Section 2(s) as it stood at the relevant time. *We find from the nature of the duties assigned to Mukerjee that his main work was that of canvassing and any clerical or manual work that he had to do was incidental to his main work of canvassing and could not take more than a small fraction of the time for which he had to work. In the circumstances the Tribunal's conclusion that Mukerjee was a workman is incorrect.* The Tribunal seems to have been led away by the fact that Mukerjee had no supervisory duties and had to work under the directions of his superior officers. That, however, would not necessarily mean that Mukerjee's duties were mainly manual or clerical. From what the Tribunal itself has found it is clear that Mukerjee's duties were mainly neither clerical nor manual. Therefore, as Mukerjee was not a workman his case would not be covered by the Industrial Disputes Act and the Tribunal would have no jurisdiction to order his reinstatement. We, therefore, set aside the

order of the Tribunal directing reinstatement of Mukerjee along with other reliefs."

A similar question came up for consideration before a Bench of three learned Judges of this Court in Burmah Shell Oil Storage and Distribution Co. of India Ltd. v. Burma Shell Management Staff Assn. wherein it was held, inter alia, that if a person is mainly doing supervisory work and incidentally or for a fraction of the time also does some clerical work, it would have to be held that he is employed in a supervisory capacity, and conversely, if the main work done is of clerical nature the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity. This Court, considering several classes of employees including Sales Engineering Representative and District Sales Representative, held on the materials placed before the Industrial Tribunal that both these classes of employees do not come within the meaning of the expression "workman" in Section 2(s). It is relevant to note here that this Court was considering the validity of an interim award passed by the Industrial Tribunal, Maharashtra, Bombay in the case.

Taking note of the abovementioned two three-Judge Bench decisions and other cases decided by this Court, a Constitution Bench in the case of *H.R. Adyanthaya v. Sandoz (India) Ltd.* made the following observations: (SCC p 752, paras 23-24)

"23, However, the decisions in the later cases, viz.' S.K. Verma, Delton Cable, and Ciba Geigy cases did not notice the earlier

decisions in May & Baker, WIMCO and Burmah Shell cases and the very same contention viz. if a person did not fall within any of the categories of manual, clerical, supervisory or technical, he would qualify to be workman merely because he is not covered by either of the four exceptions to the definition, was canvassed and though negatived in earlier decisions, was accepted. Further, in those cases the Development Officer of the LIC, the Security Inspector at the gate of the factory and Stenographer-cum-Accountant respectively, were held to be workmen on the facts of those cases. It is the decision of this Court in A. Sundarambal case which pointed out that the law laid down in May and Baker case was still good and was not in terms disowned.

24. We thus have three three-Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz., manual, clerical, supervisory or technical and two two-Judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. *As against this, we have three three-Judge Bench decisions which have without referring to the decisions in May & Baker, WIMCO and Burmah Shell cases have taken the other view which was expressly negatived viz. if a person does not fall within the four exceptions to the said definition he is a workman within the meaning*

> ***of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories viz. manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretations."***

The judgment in **Sonepat Cooperative Sugar Mills Ltd. Versus Ajit Singh, (2005) 3 SCC 232,** cited by Mr. Anup Rattan is distinguishable since the Hon'ble Supreme Court had considered therein whether the Legal Assistant with qualification of degree in law was a workman or not. The Hon'ble Supreme Court has taken into consideration the nature of his duties like preparation of written statements and notices, recording enquiry proceedings, giving opinions, drafting, filing the pleadings and representing the company in all types of cases viz., civil, labour and arbitration references independently. In the present case the workman was appointed as Clerk and was designated as Personal Assistant. The Labour Court on the basis of the evidence led by the parties had held that the workman was not discharging any supervisory/managerial duties and was discharging merely clerical duties. The Labour Court had also taken into consideration the communications where the designation has been shown to be that of Personal Manager of the petitioner without placing on record the

copy of the appointment letter issued by the Management in his favour. The learned Labour Court had rightly not taken into consideration the communications, i.e. Annexures P5 and P-6 and had primarily taken into consideration the main duties discharged by the workman.

The finding whether the petitioner is employed as a workman or not is a question of fact and this Court will not interfere in the finding of fact recorded by the Labour Court holding the respondent a workman. The facts in the present case do not warrant holding that the respondent was either working in supervisory capacity or managerial capacity.

In a recent judgment **Anand Regional Coop. Oil Seeds Growers' Union Ltd. Versus Shaileshkumar Harshdbhai Shah, (2006) 6 SCC 548**, the Apex Court has held that for determining the question as to whether the person employed in an industry is a workman or not, not only the nature of work performed by him but also the terms of appointment in the job are relevant considerations. Their Lordships of the Hon'ble Supreme Court have held as under:-

> **"The ingredients of the definition of "workman" must be considered having regard to the following factors:**
>
> **(i) Any person employed to do any skilled or unskilled work, but does not include any such person employed in any industry for hire or reward.***
>
> **(ii) There must exist a relationship of employer and employee.**

(iii) The persons inter alia excluded are those who are employed mainly in a managerial or administrative capacity.

For determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also the terms of the appointment in the job performed are relevant considerations.

Supervision contemplates direction and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being in charge of the section alone and that too it being a small one and relating to quality control would not answer the test.

The Hon'ble Supreme Court in **Dharangadhra Chemical Works Ltd., v. State of Saurashtra and others, AIR 1957 SC 264** has held that the decision of the Industrial Tribunal on a question of fact which it had jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution of India unless at least it is shown to be fully unsupported by evidence. Their Lordships have held as under:-

> **"The Industrial Tribunal on a consideration of the fact in the light of the principles enunciated above came to the conclusion that though certain features which are usually to be found in a contract of service were absent, that was due to the nature of the industry and that on the whole the status of the agarias was that of workmen and not independent contractors. It was under the circumstances strenuously urged before us by the learned counsel for the respondents that the question as regards the relationship between the appellants and the agarias was a pure question of fact, that the Industrial Tribunal had jurisdiction to decide that question and had come to its own conclusion in regard thereto, that the High Court, exercising its jurisdiction under Arts. 226 and 227 of the Constitution, was not competent to set aside the finding of fact recorded by the Industrial Tribunal and that we, here, entertaining an appeal from the decision of the high Court, should also not interfere with that finding of fact."**

The Hon'ble Supreme Court had also held in the above cited cases that if on few occasions, the workman had discharged the duties of supervisor that will not take him out of the ambit of the expression 'workman'.

The upshot of the above discussion is that the finding recorded by the Labour Court is supported by evidence. The Labour Court had taken into consideration the main duties discharged by the workman while determining his status. The Labour Court is only required to look into the main duties which were being discharged by the workman. The Labour Court had

taken the correct view that the duties being discharged by him were mainly clerical in nature.

Consequently there is neither any jurisdictional error nor any procedural irregularity in the award dated 7.7.2005.

Accordingly, the writ petition is dismissed and the award dated 7.7.2005 is upheld. The interim order dated 23rd November, 2005 is vacated. The workman is also held entitled to costs quantified at Rs. 5,000/-.

(Rajiv Sharma),
Judge

June 19, 2007
(sck).